

HOWARD ROME MARTIN & RIDLEY LLP
1900 O' FARRELL STREET, SUITE 280
SAN MATEO, CA 94403
TELEPHONE (650) 365-7715

TODD H. MASTER [SBN. 185881]
tmaster@hrmrlaw.com
ROBERT J. GUNDERT [SBN 104486]
rgundert@hrmrlaw.com
HOWARD ROME MARTIN & RIDLEY LLP
1900 O'Farrell Street, Suite 280
San Mateo, CA 94403
Telephone: (650) 365-7715
Facsimile: (650) 364-5297

Attorneys for Defendants
CITY OF MENLO PARK and DAVE BERTINI

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO

MICHAEL ZELENY, an individual

Plaintiff,

vs.

EDMUND G. BROWN, JR., an individual, in
his official capacity, et al.

Defendants.

Case No. 17-cv-07357-RS (TSH)

**SUPPLEMENTAL DECLARATION OF
NICOLAS A. FLEGEL IN REPLY TO
PLAINTIFF'S OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANTS CITY OF MENLO PARK
AND DAVE BERTINI**

Date: March 18, 2021

Time: 1:30 p.m.

Dept.: Courtroom 2

Judge: Hon. Richard Seeborg

Trial Date: None

I, NICOLAS A. FLEGEL, declare:

1. I am a competent adult over the age of eighteen. Unless otherwise qualified, I have personal knowledge of the matters set forth in this declaration and, if called as a witness, could and

SUPPLEMENTAL DECLARATION OF NICOLAS A. FLEGEL IN REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT OF DEFENDANTS CITY OF MENLO PARK AND DAVE BERTINI; Case No. 17-cv-07357-RS

1 would competently testify thereto.

2 2. I am a partner at the law firm of Jorgenson, Siegel, McClure & Flegel, LLP
3 ("JSMF"). JSMF has served as contract City Attorney for the City of Menlo Park for decades and I
4 have acted in the role of Assistant City Attorney for the City of Menlo Park since approximately
5 2005.

6 3. As stated in my previously filed declaration (Doc. 160-2) in support of defendants'
7 motion for summary judgment, I served a Public Records Act request upon the State of California
8 in the context of certain other litigation that I was handling for the City of Menlo Park. I requested
9 from the State copies of:

10 Any documents regarding the right of way map for Sand Hill Road and the Highway 280
11 intersection. As well as any maintenance agreements between Caltrans and the City of
12 Menlo Park. Lastly, any maintenance records for any traffic signal for the last year, at the
13 east side of the freeway intersection (i.e., where Sand Hill Road intersects with Sand Hill
14 Circle).

15 4. In response the California Department of Transportation (Caltrans) produced those
16 documents attached to my earlier filed declaration as Exhibits B and C. Also included within
17 Exhibit C (at 160-2, Pp. 84-85) were two Caltrans District 4 Right of Way Maps (Bates numbered
18 MP006681 and MP006682), which can be found at the Caltrans website at:

19 <https://www.arcgis.com/apps/webappviewer/index.html?id=04efb9a9f14c4da2aabd9ce36b7dda48>

20 5. The blue lines on Page 84 of Doc. 160-2 surround the area that is indicated on the
21 Caltrans website as being within the State's right of way, under Caltrans' jurisdiction.

22 6. The map at Page 85 of Doc. 160-2 also shows a portion of the same area, which
23 clearly includes the median in question, which is to the left of the words "Sand Hill Rd" that are
24 clearly seen on the image. There are two "Sand Hill Rd" notations. I am referring to the notation
25 that does not have a blue line running through it, i.e. the notation below the other "Sand Hill Rd"
26 notation.

7. The area demarcated by the blue lines includes Interstate Highway 280. Referring to the Freeway Maintenance Agreement dated July 1, 1972 (which is found within Exhibit C to Doc. 160-2 at pages 59-76), there is a chart at Doc. 160-2, Pg. 72, which refers to the delegation of maintenance responsibilities between the City and State. Under the column for “**280” the chart indicates that Encroachment Permits are solely the responsibility of the “Dept” (i.e. Caltrans) and not the City. In response to my Public Records Act request the State produced no other agreement that indicate otherwise.

8. It was on the basis of a.) my years of legal experience representing the City of Menlo Park as an Assistant City Attorney, b.) my years of legal experience dealing with public right-of-way and jurisdictional issues that have arisen numerous times over the years, and c.) the above-referenced State documents that I expressed the legal opinions that:

a. “[B]ased on the information provided by Caltrans, the location proposed by plaintiff Michael Zeleny for his proposed special event, is and was located within Caltrans' right-of-way and would thus require approval from the State of California.”

b. “Given that the subject center median is within Caltrans' right-of-way, Menlo Park does not have jurisdiction to approve any activity on or within that particular center median.”

c. “[T]he City had cause to deny Mr. Zeleny's Special Event Permit application on that jurisdictional ground alone as it has no right to grant a permit for the area in which he sought to conduct his proposed event.”

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed on this 11th day of February 2021, at Menlo Park, California.



Nicolas A. Flegel